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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Right to restitution, compensation and rehabilitation for victims of grave violations of human rights

Report of the Secretary-General prepared pursuant to Commission resolution 1995/34

Addendum

The present report contains information submitted by the Governments of Mexico, Morocco and Trinidad and Tobago.

Mexico

[Original: Spanish]
[24 November 1995]

1. In our country, the applicable legislation relating to human rights violations that involve the perpetration of criminal acts is essentially based on the final paragraph of article 20 of the Constitution of the United Mexican States, which makes reference to the redress of injury caused to the victim or the aggrieved party and reads as follows:

> *"In any criminal proceedings, the victim or the party aggrieved by any offence shall be entitled to the following: to legal advice, to obtain redress for the injury caused where appropriate, to the assistance of the Public Prosecutor, to medical attention where necessary, and to any other rights provided for by law."*

2. Various amendments were made to the following legislation at the beginning of 1994:

Penal Code for the Federal District in Matters of Ordinary Jurisdiction and for the entire Republic in Matters of Federal Jurisdiction; Federal Code of Criminal Procedure and the Code of Criminal Procedure for the Federal District; Amparo Act; International Extradition Act; Civil Code for the Federal District in Matters of Ordinary Jurisdiction and for the entire Republic in Federal Matters; Federal Act relating to Responsibilities of Public Servants; Federation Fiscal Court Organization Act; Federal District Administrative Court Act; Federal Act for the Prevention and Punishment of Torture; Federal Budget, Accounting and Public Expenditure Act; and Federation Organization of Justice Act.

3. Among the amendments to the Penal Code for the Federal District in Matters of Ordinary Jurisdiction and for the entire Republic in Matters of Federal Jurisdiction, we find that:

In accordance with the provisions of article 30 of the Penal Code, redress for injury includes:

(i) Restitution of the object obtained as a result of the offence and, if this is not possible, payment of the cost of that object;

(ii) Indemnity for the material and moral injury caused, including payment for any remedial treatment which, as a result of the offence, may be necessary for the victim to recover his health; and

(iii) Compensation for the damage caused.

4. Article 30 bis of the Code provides that the following are entitled to redress for injury:

The aggrieved party;

In the event of the decease of the aggrieved party, the surviving spouse or unmarried partner, and any minor children;

In the absence of any of the above, other descendants or ascendant relatives who were financially dependent on the aggrieved party at the time of his decease.

5. Article 32 of the Penal Code provides that the following persons have an obligation to redress the injury:

(i) Ascendant relatives, for offences perpetrated by any descendants under their parental authority;

(ii) Guardians and custodians, for offences perpetrated by any legally incompetent persons who may be under their authority;

(iii) The principals of boarding-schools or workshops whose establishments are frequented by students or apprentices below the age of 16 years, for offences perpetrated by them while under the principals' care;

(iv) Owners, employers or persons responsible for commercial negotiations or establishments of any kind, for offences committed by their workers, day labourers, employees, domestic workers or craftsmen, in connection with and during the performance of their work;

(v) Companies or groups, for offences committed by their partners or managing directors, to the same extent as, under the law, they are responsible for any other obligations contracted by the latter;

(vi) The State has a joint obligation to redress any injuries arising from wilful wrongs of its public servants perpetrated in the course of their duties, and a subsidiary obligation in the case of culpable wrongs.

6. Article 34 states that:

"The redress for the injury that shall be made by the offender is of the nature of a public penalty and shall be called for ex officio by the Public Prosecutor. The aggrieved party or his rightful claimants may provide to the Public Prosecutor or judge, as the case may be, the facts and evidence available to them to demonstrate the need for, and amount of, that redress, in accordance with the provisions of the Code of Criminal Procedure."

7. Another important point relating to redress of injury can be found in article 37, which states:

"The redress of injury shall be ordered in the same way as the fine. Once the decision for redress is made enforceable, the court which has handed it down shall immediately transmit a certified copy of the decision to the competent taxation authority which, within three days of receiving the copy, shall institute the garnishment process, notifying the person in whose favour it has been awarded, or his legal representative."

8. As far as administrative liability is concerned, the procedure to obtain redress of injury has been accelerated, in respect of both deadlines and formalities to be completed; prior to the amendment the time needed and the excessive bureaucratic formalities made it impossible to obtain redress in practice. In addition, the possibility of legal recourse was left open in order to render redress effective in cases where a public servant found to be responsible refused to provide it.

9. As a general comment, articles 30 to 39 of the Code provide precise details and indicate the characteristics of redress of injury in relation to criminal matters in our country.

10. Another applicable legal instrument relating to grave violations of the human rights of an individual is the Federal Act for the Prevention and Punishment of Torture.

11. Article 10 of this Act stipulates that any person who has committed the offence of torture shall be obliged to meet the costs of legal advice, medical assistance, funerals or rehabilitation or costs of any other nature incurred by the victim or his relatives as a result of the offence. In addition, he shall be obliged to redress the injury and to provide compensation for the damage caused to the victim or his financial dependants in the following cases:

(i) Loss of life;

(ii) Deterioration of health;

(iii) Loss of freedom;

(iv) Loss of monetary income;

(v) Unfitness for work;

(vi) Loss of, or damage to, property;

(vii) Damage to reputation.

12. These are some of the major features of Mexican legislation relating to the redress of injury caused to victims of grave violations of their fundamental rights.

Morocco

[Original: French]
[14 November 1995]

1. Moroccan legislation comprises a whole range of protective provisions set out in the Code of Obligations and Contracts, the Penal Code, the Code of Criminal Procedure, the Code of Civil Procedure and the Act establishing administrative courts. The principle - well established in judicial precedents - is that the victim of any violation has the right to redress commensurate with the injury suffered, a right which passes to the victim's successors in the event of his death.

1. The provisions of the Code of Obligations and Contracts

2. The code of obligations and contracts contains several provisions on this subject.

3. The principle of compensation for victims is set out as follows in article 77: "Any act whatsoever perpetrated by a person who, without being authorized by law, knowingly and intentionally causes material or moral injury

to another person obliges its perpetrator to redress that injury, once it has been established that the act is the direct cause of the injury. Any stipulation to the contrary is void."

4. The subsequent provisions specify as follows: "Every individual is responsible for any moral or material injury he may have caused" (art. 78); "the State and the municipalities are responsible for any injury caused directly by the functioning of their departments and by errors committed by their employees in the course of their duties" (art. 79); "State and municipal employees are personally responsible for injury caused by their bad faith or by serious errors committed in the performance of their duties" - in this case proceedings can be brought against the State and the municipalities "in the event of the insolvency of the responsible officials" (art. 80); and "a magistrate who fails to discharge the duties of his office shall incur civil liability vis-à-vis the injured party in cases where an appeal against judicial misconduct lies against him" (art. 81).

5. The right to restitution is governed, inter alia, by articles 101 and 102, which provide that "the unlawful possessor shall, together with the object, make restitution of all the natural and civil benefits that he has gained or could have gained if he had administered it in a normal manner from the time that the object came into his possession", and that "the unlawful possessor is liable for the object. If he is unable to present it or if it has been damaged, even as a result of a fortuitous occurrence or force majeure, he shall be required to pay its value as estimated on the day it came into his possession. In the case of tangible objects, he shall make restitution of an equivalent quantity".

2. The provisions of the Penal Code

6. Although its principal objective is to maintain public order through the imposition of penalties on persons found guilty of offences, in certain circumstances criminal legislation also concerns itself with the interests of the victims of such offences.

7. In this connection, mention should first be made of the principle set out in article 105 of the Penal Code whereby the decision pronouncing a penalty or security measure makes provision for the costs and expenses of the trial and "if necessary, also rules on restitutions and the award of damages".

8. Articles 106 and 108 set out two important points in this respect. Firstly, "restitution may be ordered by the court even if the owner does not participate in the proceedings", and secondly, "the award of damages shall ensure that the victim obtains full redress for the personal, current and established injury he has been directly caused by the offence".

9. Furthermore, it should be emphasized that article 225 lays down severe penalties for "any magistrate, public official, or representative or employee of the public authorities or the police force who orders or perpetrates an arbitrary act that is prejudicial either to individual freedom or to the civil rights of one or more citizens".

10. In this respect, the right to initiate civil liability proceedings is specifically laid down, article 226 stipulating that "the offences provided for in article 225 render liable both the perpetrator and the State, except in the event of recourse by the State against the said perpetrator".

3. The provisions of the Code of Criminal Procedure

11. The Code of Criminal Procedure devotes a whole chapter to the exercise of a criminal indemnity action to redress injury suffered by the victims of an offence (thereby including violations of human rights and fundamental freedoms). We would simply note that, in accordance with article 7, this action "is open to all those who have personally suffered bodily, material or moral injury, as a direct result of the offence", and that, in accordance with article 9, "the criminal indemnity action may be brought at the same time as the prosecution proceedings before the criminal court hearing the latter proceedings. This court is competent regardless of the identity of the natural or legal person in civil or public law responsible for the injury".

12. Article 10 stipulates that "the criminal indemnity action may be brought before the competent civil court separately from the prosecution proceedings".

13. Articles 93 to 99 and 333 to 340 of the same Code prescribe the procedures for bringing criminal indemnification proceedings: any person who claims to have suffered injury as a result of an offence may bring such proceedings before the examining court or the trial court, specifying his demands and the amount of damages sought (arts. 93, 33, 334).

4. The provisions of the Code of Civil Procedure and the Act establishing administrative courts

14. Mention may be made of two provisions relating to jurisdictional competence: the first, contained in the Code of Civil Procedure (art. 28, para. 6), states that the action for redress of injury is brought "before the court in the place where the prejudicial act was committed or before the court of the defendant's place of domicile, whichever the claimant chooses".

15. The second provision, which is laid down in the Act establishing administrative courts (art. 8), specifies that the "administrative courts are competent ... to hear at first instance ... actions for the redress of injuries caused by the acts or activities of public officials".

Trinidad and Tobago

[Original: English]
[24 November 1995]

1. Apart from the Constitution of the Republic of Trinidad and Tobago (chap. I, part I, sects. 4 and 5), there is no other legislation adopted or in the process of being adopted that relates to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms.

2. Sections 4 and 5 of the Constitution, however, set out the fundamental rights and freedoms of a citizen of Trinidad and Tobago and provide for their protection.

3. Under Section 14, a citizen who alleges that any of the provisions of the Constitution has been, is being, or is likely to be contravened in relation to him, may apply to the High Court for redress by way of originating motion. The High Court may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of any of the provisions of the Constitution to the protection of which the person concerned is entitled.

4. The ambit of section 14 is sufficiently wide to allow for restitution and compensation of victims and the courts have always liberally interpreted the Constitution to give full effect to the fundamental rights of citizens who have alleged infringement of their rights.

5. With respect to rehabilitation, the High Court has not had the occasion to consider this matter.